IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/09/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION No.16384 OF 2004,
W.P.M.P.Nos.19358/2004, 23939/2004
AND W.V.M.P.No.1132/2004.

The Management,
Palayamkottai Urban Cooperative Bank Ltd.,
Palayamkottai,
Tirunelveli-627 002. ... Petitioner

-Vs-

1. The Presiding Officer,
Labour Court,
Tirunelveli.

2. Mr.V.Ganesan ... Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying for the relief as stated therein.

For petitioner : Mr.S.M.Subramaniam

^For R.2 : Mr.T.S.Rajamohan

:O R D E R
The above Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records pursuant to the order dated 12.4.2004 made in I.D.No.198 of 1993 by the first respondent and quash the same.
2. On a perusal of the materials placed on record and upon hearing the learned counsel for both, it comes to be known that the second respondent was the Clerk of the petitioner Bank and on ground of unauthorised absence from 2.8.1992, the first respondent has conducted domestic enquiry by issuing the charge memo. dated 7.1.1993 and since the second respondent has not participated in the enquiry, the Enquiry Officer, based on the records and the evidence of the Management, has held the charges proved and accordingly the second respondent was terminated from service by the petitioner Bank with effects from 20.2.199 3 and the order of termination was published in the daily Newspaper on 23.2.1993.

3. It further comes to be known that the second respondent has

challenged the said order of termination before the Labour Court and the Labour Court, having conducted a thorough enquiry into the matter, wherein on behalf of the second respondent/workman, one witness would be examined as W.W.1 for oral evidence and two documents would be marked as Exs.W.1 and W.2 and on behalf of the petitioner/management, they would examine their Secretary-in-charge as M.W.1 for oral evidence and would mark thirty documents for documentary evidence as Exs.M.1 to M.30 and in consideration of all the evidence placed on record, the Labour Court would order reinstatement of the workman with continuity of service but without backwages. It is against this order of the Labour Court, the Management has come forward to file the above Writ Petition on certain grounds as brought forth in the grounds of Writ Petition.

4. During arguments, the learned counsel for the petitioner/ Management would submit that the second respondent was a habitual absconder and even on earlier occasion he unauthorisedly absented from duty from 1.4.1991 and since he was remaining absent from duty without any information or sanction of leave the Management had warned him several times and in fact, he was removed from service by the Management in the year 1992 and during the course of conciliation, the Management has agreed for reinstatement without prejudice to the disciplinary proceeding to be taken against the second respondent; that even after joining on 17.6.1992, the second respondent had not changed his attitude and he applied for a casual leave of six days and thereafter remained absent from 2.8.1992 onwards; that the whereabouts of the second respondent and his correct address itself were not available with the Management and the letters sent to the second respondent were also returned; that a charge memo. was issued on 7.1.1993 and the domestic enquiry was ordered and the same was published in the newspaper to give all reasonable opportunities to the second respondent, but the second respondent did not participate in the enquiry and therefore the Enquiry Officer, based on the materials made available on record, has conducted the enquiry and found the charges proved, but the Labour Court, without appreciating the facts and circumstances of the case in the manner required under law, has allowed the claim of the workman. On such arguments, the learned counsel for the petitioner/Management would pray to allow the above writ petition.

5. On the contrary, on the part of the second respondent/workman, besides filing a counter, the learned counsel for the second respondent would submit that in the I.D.No.198 of 1993, the second respondent has raised a preliminary issue as to 'whether the domestic enquiry was conducted in accordance with law' and the Labour Court, by its order dated 7.5.2001 has held that the domestic enquiry was not conducted in accordance with law and aggrieved, the petitioner/Management has filed W.P.16722 of 2001 before this Court, but had withdrawn the same as not pressed on 21.11.2003 and hence, the finding of the Labour Court that the domestic enquiry was not conducted in accordance with law has become final and therefore the petitioner/Management is estopped from challenging the order passed in I.D.No.198 of 1993; that the Management did not conduct any further enquiry in spite of the finding of the Labour Court that no proper enquiry was conducted; that the Management Witness himself has admitted in his evidence that the second respondent/workman is entitled to Medical Leave for 365 days and that the workman has availed leave

of 275 days, which is within the permissible limits and therefore it cannot be said that the second respondent has absented unauthorisedly from the office and that the Labour Court has considered and assessed all the facts and circumstances of the case in the proper perspective and has allowed the prayer of the second respondent. On such arguments, the learned counsel for the second respondent/workman would pray to dismiss the above Writ Petition.

6. In clarification, the learned counsel for the petitioner/ Management would submit that for the period of absence of 275 days, since no sanction was accorded to the alleged leave requested by the second respondent/workman, it cannot be said that he has availed Medical Leave within the permissible limits and therefore the same has to be treated only as a period of unauthorised absence and would pray for the relief extracted supra.

7. As a reply to this query raised by the learned counsel for the Management, the learned counsel for the second respondent/workman would submit that the Management Witness has deposed in his evidence before the Labour Court that there was no hard and fast rule regarding the leave requests to be made by the employees and the employees would even forward leave letter for ratification for the leave which they took earlier. The learned counsel would further submit that the workman has forwarded his leave application for sanction and the management has made endorsement that his leave application would be considered after his joining duty and the Management Witness has also categorically admitted that they have neither rejected the leave application of the workman nor took the same for consideration for sanction; that when the Management has conceded that the workman had leave eligibility for the relevant period and the reason for leave was that he was suffering from jaundice was also not disputed by the Management, the bold allegation made by the Management that the workman has absented himself from duty does not hold water and would pray to dismiss the above Writ Petition.
8. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioner and the second respondent as well, this Court is able to assess that three aspects are vital for consideration in deciding the above writ petition, the first one being 'whether filing of an earlier writ petition in W.P.No.16722 of 2001 by the Management before this Court and withdrawing the same as 'not pressed' as on 21.11.2003 would give way for the Labour Court's order dated 7.5.2001 to become final and whether the Management would be estopped from challenging the order in this writ petition?, (ii) whether the manner in which the petitioner is alleged to have gone on leave is within the parameters or accepted norms of law? and (iii) whether a proper domestic enquiry was conducted in accordance with law by the disciplinary authority?

9. So far as the first point raised above is concerned, W.P.No.1672 2 of 2001 had been filed not against the final order dated 12.4.2004 made in I.D.No.198 of 1993 as it is in the case in hand, but as against an interim order passed regarding a preliminary issue raised pertaining to the conduct of domestic enquiry wherein the first respondent/Labour Court had passed an order deciding that no due opportunity was afforded to the workman. Therefore, the withdrawal of the said Writ Petition filed by the Management would not, in any manner, affect the petitioner/Management to challenge the final order dated

12.4.2004 passed in the I.D.No.198 of 1993 and hence the first point is answered accordingly in favour of the petitioner/Management and against the second respondent/workman.

10. Needless to mention that if the second point is answered in favour of the second respondent/employee, the question of conduct of disciplinary proceeding as it is contemplated under the Section would not arise at all and if the second point raised above is answered against the second respondent/employee, the third point regarding the conduct of the domestic enquiry would become vital since for any delinquency, without such an opportunity for the employee to face the enquiry and to get himself cleared off the charges is inevitable in law and hence it is vital to approach the subject in the manner required under law and in assessing and answering the above points raised.

11. Dealing with the second point regarding the second respondent/ employee going on leave often without proper sanction of the same by the Management as it is claimed on the part of the Management, the plain facts are that at the relevant point of time, the second respondent/workman had gone on leave for six days from 27.7.1992 to 1.8.1992 and further from 2.8.1992 to 2.5.1993 on eight occasions he had applied for medical leave without even ascertaining whether the leave has been sanctioned or not. It would be claimed on the part of the Management that those leaves have not been sanctioned since on the part of the second respondent/workman, he failed to satisfy the Management regarding the genuineness of the reasons assigned or the authenticity of the proof sent along with such applications since no such certificates issued by some Doctors would speak to the truth of the reasons assigned by the second respondent/workman and that the Management has got every right to testify the validity of such leaves applied and medical certificates issued even though the second respondent would have had the Medical Leave to his credit. Therefore, the second respondent/employee cannot take it for granted that staying somewhere and sending the leave letter, he could assume that those leaves were sanctioned unless the same is done by the Management accepting the reasons assigned and for a continuous stretch of 275 days for having gone on leave renewing the same eight times on some medical certificates sent along with the leave letters is not the answer nor could it be taken that the Management has sanctioned those leaves. Therefore, basically, to the admitted facts of the second respondent, he has neither acted in the manner required under law or could he come forward to put up the defence that once the leve letter is sent, it is mandatory on the part of the Management to accept the same just for the simple reason that he is eligible to apply for such leave without the same being sanctioned by the Management and therefore, even regarding the admitted facts, it could only be held that the claim of the second respondent before the Labour Court, is not an acceptable one. The second point is also thus decided in favour of the petitioner/Management.

12. Coming to the conduct of the enquiry and the order passed by the Labour Court raising preliminary issue regarding the enquiry proceeding, the interim order dated 7.5.2001, since having not been testified, cannot become final since those aspects have also been covered by the final order passed in

I.D.No.198 of 1993 wherein, all those aspects which have been covered in the interim order have been considered and therefore by specifically not testifying the interim order, the petitioner/Management would not become disentitled to testify the final order passed by the Labour Court dated 12.4.2004 in the same I.D. and therefore filing of the above Writ Petition and admitting the same by this Court has been perfectly right.

13. So far as the enquiry proceedings are concerned, a proper enquiry has been initiated and since the second respondent did not cooperate with the Enquiry Officer in the conduct of the enquiry, nothing was able to be done by the Enquiry Officer in the manner required under law regarding the following of the procedures or opportunity to be given. Therefore, under such a situation, the vital aspect that is to be considered is 'whether, on the part of the Enquiry Officer, he gave proper notice to the petitioner for the petitioner to avail the opportunities in participating the enquiry?'

14. On a perusal of the materials, it comes to be seen that even effecting the publications, the Enquiry Officer has invited the petitioner to participate in the enquiry proceeding, in spite of which he did not choose to partake. Therefore, under such circumstances, the Management is left with no option but to arrive at its own conclusion since the given opportunity has not been made use of by the delinquent officer. Hence, it cannot be said, as it has been wrongly concluded in the interim order passed by the Labour Court, that no sufficient opportunity was afforded for the delinquent and hence the third point is also decided in favour of the petitioner/Management and against the second respondent/workman.
In result,
(i) the above Writ Petition succeeds and the same is allowed.
(ii) The order dated 12.4.2004 made in I.D.No.198 of 1993 by the Labour Court, Tirunelveli is hereby set aside.
Consequently, W.P.M.P.Nos.19358/2004, 23939/2004 and W.V.M.P.No.113 2/2004 are closed.

However, in the circumstances of the case, there shall be no order as to costs.

Index: Yes
Internet: Yes
Rao

To

The Presiding Officer,
Labour Court,
Tirunelveli.

□